IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5054 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : YES

1 to 4 : NO

5 : YES to be sent to the Tribunal below

SHEIKH USMANGANI SULEMANBHAI MAMDUWALA

Versus

R S SHUKLA

Appearance:

1. Special Civil Application No. 5054 of 1997

MR BS PATEL for Petitioner No. 1

RULE SERVED for Respondent No. 1-6

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 07/02/2003

ORAL JUDGEMENT

Feeling aggrieved by the Order dated 30th June, 1997 in Revision Application No. 130 of 1997 made by the

Gujarat State Cooperative Tribunal [hereinafter referred to as, "the Tribunal"], the petitioner has preferred the present petition.

It appears that the petitioner herein has instituted Arbitration Suit No. 351 of 1997 in the Court of Board of Nominees, Kheda challenging the nomination of Defendant no. 3 with respect to the Balasinor Nagarik Sahakari Bank. By Order dated 26th June, 1997 made below Application Exh. 6, the Board of Nominees cancelled the nomination of the defendant no. 3 and directed the election to proceed further. Feeling aggrieved, the defendant no. 3 has preferred the above Revision Application No. 130 of 1997 before the Tribunal. The petitioner had filed Caveat before the Tribunal. Nevertheless, without affording opportunity of hearing to the petitioner, the Tribunal has, under the impugned order, granted ad-interim stay in favour of the Revision Applicant i.e the Defendant no. 3.

The gravamen of the grievance made by the petitioner is in respect to the impugned order having been made without hearing the petitioner. It is his case that once the petitioner had filed the Caveat, it was the bounden duty of the Tribunal to ascertain that the petitioner was served with an advance copy of the Revision Application and was given due opportunity of hearing before the Tribunal before any order adverse to the petitioner was made by the Tribunal.

I do agree with the contention raised by the petitioner. Once the Caveat was filed by the petitioner and was brought to the notice of the Tribunal, the Tribunal ought to have ascertained that the advance service of the memo of the application was made to the petitioner and that the date of hearing was also informed to the petitioner. The Tribunal has surely not acted in accordance with law. The Tribunal having recorded filing of the Caveat by the petitioner has proceeded to hear the revision applicant and to grant ad-interim stay without affording opportunity of hearing to the petitioner.

However, in view of passage of time, the cause of action shall not survive. No further order is required to be made on this petition. Hence, the petition is dismissed. Rule is discharged.

[Ms. R.M Doshit, J.]

Prakash*